

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**STRATAGENE CORPORATION,**

Plaintiff,

v.

**THIRD WAVE TECHNOLOGIES, INC.,**

Defendant.

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C.A. No. 05-275-SLR

**SECOND STIPULATED AMENDMENT TO SCHEDULING ORDER**

WHEREAS, the parties in the above-referenced action have previously stipulated to a hiatus in discovery because they have been engaged in good faith settlement negotiations;

WHEREAS, it now appears that the case will not settle in the near future and that discovery should continue;

WHEREAS, the Court directed the parties to submit an amended scheduling order on July 10, 2006;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, subject to the approval of the Court, that the Scheduling Order (D.I. 13) shall be amended as follows:

**2. Discovery.**

(b) All fact discovery shall be commenced in time to be completed by **March 16, 2007.**

(1) Document production shall be completed on or before **September 7, 2006.**

(c) Expert discovery shall be commenced in time to be completed by **August 15, 2007**.

(1) Expert reports on issues for which the parties have the burden of proof due **June 15, 2007**. Rebuttal expert reports due **July 16, 2007**.

(3) All Daubert motions shall be filed on or before **September 14, 2007**.

(d) If willfulness has been asserted and absent agreement among the parties, defendant must inform plaintiff as to whether it intends to rely on advice of counsel by **October 2, 2006**. If the decision is to rely on such advice, the scope of discovery shall include the materials provided by defendant to its counsel and whatever other materials related to the issues in dispute that defendant had in its possession at the time the advice was sought.

(e) Supplementations under Rule 26(e) due **June 15, 2007**.

(f) **Discovery Disputes.**

(1) The court shall conduct in-person discovery status conferences on **September** \_\_\_\_\_, **2006** from \_\_\_\_\_ m. to \_\_\_\_\_ m., and on \_\_\_\_\_ from \_\_\_\_\_ m. to \_\_\_\_\_ m., the time to be allocated equally among the parties.

3. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before **January 5, 2007**.

4. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to Magistrate Judge Thyng for the purposes of exploring ADR.

5. **Claim Construction Issue Identification.** If the court does not find that a limited earlier claim construction would be helpful in resolving the case, on **November 1, 2006**, the parties shall exchange lists of those claim terms that they believe need construction and

their proposed claim construction of those terms. This document will not be filed with the court. Subsequent to exchanging such lists, the parties will meet and confer to prepare a Joint Claim Construction Statement to be submitted pursuant to paragraph 7 below.

6. **Summary Judgment Motions.** All summary judgment motions shall be served and filed with an opening brief on or before **November 7, 2007**. Briefing shall be pursuant to D. Del. LR 7.1.2. No summary judgment motion may be filed more than **ten (10)** days from the above date without leave of the court.

7. **Claim Construction. Plaintiff proposes** that the parties shall agree upon and file the Joint Claim Construction Statement on **October 15, 2007**, with the claim chart separately docketed; the parties will file simultaneous opening claim construction briefs on **November 7, 2007**; simultaneous response briefs should be filed by **November 30, 2007**.

The hearing on the claim construction and motion(s) for summary judgment will be heard on **January \_\_, 2008** at \_\_\_\_\_ .m.

10. **Pretrial Conference.** A pretrial conference will be held on \_\_\_\_\_, **2008** at \_\_\_\_\_ m. in Courtroom No. 6B, Sixth Floor Federal Building, 844 King Street, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. LR 16.4 shall govern the pretrial conference.

11. **Trial.** This matter is scheduled for a two week jury trial commencing on \_\_\_\_\_, **2008** in Courtroom No. 6B, Sixth Floor Federal Building, 844 King Street, Wilmington, Delaware. For purposes of completing pretrial preparations, the parties should plan on being allocated a total number of hours in which to present their respective cases.

The remaining provisions in the Scheduling Order shall remain unchanged.

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So ordered this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Judge

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